

No. 13-0307 BN

We convened a hearing on April 3, 2014. The Board was represented by Ian Hauptli. Hancock appeared in person and by counsel Ronald L. Jurgeson. The case became ready for our decision on July 17, 2014, the date the last written argument was due.

Findings of Fact

1. Hancock is licensed by the Board as an LPN. Her license is current and active and was so at all relevant times.
2. On December 19, 2011, Hancock was hired as a charge nurse at Benchmark Healthcare of Lee's Summit, Missouri.
3. On March 28, 2012, the Director of Nursing ("DON") at Benchmark Healthcare determined that a card of the narcotic hydrocodone, recently received from the pharmacy, was missing from a patient's supply.
4. A subsequent review of the narcotic records at Benchmark Healthcare by the DON indicated the medication had gone missing on March 24, 2012.
5. On March 29, 2012, every nurse who worked during the shift when the narcotics disappeared submitted to a urine drug screen, including Hancock.
6. The on-site presumptive test of Hancock's sample was positive for narcotics, and she was suspended pending a confirmation screening of her urine sample at a laboratory.
7. On April 3, 2012, the lab confirmed the positive drug screen results for hydrocodone and hydromorphone. Hancock possessed the drugs and did not have a prescription for them. Hancock was thereafter dismissed from her employment at Benchmark Healthcare.

Conclusions of Law

We have jurisdiction to hear the complaint.¹ The Board has the burden of proving that Hancock has committed an act for which the law allows discipline.² The Board argues that there is cause for discipline under § 335.066:

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621

¹ Section 621.045. Statutory references, unless otherwise noted, are to the 2013 Supplement to the Revised Statutes of Missouri.

² *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).

against any holder of any certificate of registration or authority, permit or license required by sections 335.011 to 335.096 or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use or unlawful possession of any controlled substance, as defined in Chapter 195, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by sections 335.011 to 335.096;

(12) Violation of any professional trust or confidence;

(14) Violation of the drug laws or rules and regulations of this state, any other state or the federal government[.]

Subdivisions (1) and (14) – Unlawful Drug Possession

The Board argues that Hancock violated a drug law and unlawfully possessed controlled substances in violation of § 195.202.1, which states:

Except as authorized by sections 195.005 to 195.425, it is unlawful for any person to possess or have under his control a controlled substance.

Hydrocodone is a controlled substance pursuant to § 195.017.4(1)(a)j, and hydromorphone is a controlled substance pursuant to § 195.017.4(1)(a)k.

Section 324.041 provides:

For the purpose of determining whether cause for discipline or denial exists under the statutes of any board, commission, or committee within the division of professional registration, any licensee, registrant, permittee, or applicant that tests* positive for a controlled substance, as defined in chapter 195, is presumed to have unlawfully possessed the controlled substance in violation of the drug laws or rules and regulations of this state, any other state, or the federal government unless he or she has a valid prescription for the controlled substance. The burden of proof that the controlled substance was not unlawfully possessed in violation of the drug laws or rules and regulations of this state, any other state,

or the federal government is upon the licensee, registrant, permittee, or applicant.

Hancock tested positive for the controlled substances without a prescription that authorized legal possession. Hancock provided no evidence she was prescribed either drug at the time she tested positive. Therefore, we find that, as a matter of law, Hancock unlawfully possessed controlled substances.

Hancock argues that the test results were unreliable due to faulty collection procedures and because she has a drug allergy to one of the agents for which she tested positive and would not have ingested it. Hancock specifically testified that she did not have experience in proper procedures for collection of a test sample, so nothing in her testimony is credible evidence of an irregularity that would have rendered the drug screen results invalid.

In support of her allegation that she would not have ingested the drugs for which she tested positive because of a drug allergy, Hancock offered medical records from three separate facilities accompanied by a single records affidavit. The records affidavit supports the authenticity of 38 pages of records from the Nevada Regional Medical Center, which were marked as Respondent's Exhibit A. The records were from Hancock's 2001 admission for the delivery of her son. The records indicate that Hancock reported no known drug allergies at that admission, and they do not reveal any adverse reactions to medication while Hancock was under Nevada Regional's care. We find no evidence of a drug allergy in the records from Nevada Regional.

The remaining medical records, marked as Respondent's Exhibits B and C, were comprised of another 38 pages from two different facilities. Exhibit B is a single sheet from St. Luke's Medical Lee's Summit that purports to be a list of current drug allergies for Hancock, indicating she is allergic to "Morphine Derivatives" and "Zoloft TABS." The space for

recording the allergic reaction date is blank. The sheet is not authenticated and it bears no indication of who recorded it. It does identify Hancock as being 31 years old, with a birth date of May 3, 1982. She would have reached the age of 31 on May 3, 2013, which was after the date of the drug test at Benchmark Health. The sheet indicates it was printed on July 17, 2013 at 3:19 p.m. It is not credible evidence of a known drug allergy on March 29, 2012, the date of the failed urine screen.

Exhibit B contains 35 pages of records from Lee's Summit Medical Center related to an emergency department visit by Hancock on February 22, 2012, just over a month before the drug screen, prompted by an episode of syncope (fainting) and collapse while at work at Benchmark Healthcare. Both the hospital and pre-hospital (ambulance/EMS) records indicate that Hancock reported no known drug allergies on the date she sought evaluation and treatment in the ER. The records contained in Exhibit C are not properly authenticated and contain no evidence that Hancock had a drug allergy at the time.

Despite Hancock's arguments, we simply have no credible evidence – and, therefore, no basis – to conclude that Hancock had a drug allergy that would have kept her from ingesting either hydrocodone or hydromorphone. The Board's evidence demonstrates it is more likely than not that Hancock unlawfully possessed those drugs on March 29, 2012 in violation of § 195.202. Such unlawful possession is cause to discipline her license under § 335.066.2(1) and (14).

Subdivision (12) – Professional Trust or Confidence

The Board argues that Hancock violated a professional trust or confidence related to her apparent misappropriation and self medication with hydrocodone and hydromorphone.

Professional trust is reliance on the special knowledge and skills that professional licensure

evidences.³ It may exist not only between the professional and her clients, but also between the professional and her employer and colleagues.⁴

Although the Board refers to the urine drug test administered to Hancock as a “random drug screen” in its written argument, the uncontroverted evidence was that the screen was performed for cause related to the disappearance of a card of hydrocodone belonging to one of the nursing home residents under Hancock’s care. The DON determined that the medication went missing on March 24, 2012 and that all nurses on duty at the facility on the shift during which the hydrocodone went missing would be subject to urine drug screens on the morning of March 29, 2012. Hancock was the only nurse who tested positive for a controlled substance at that time. She was immediately suspended and relieved of duty by her employer and was terminated on April 4, 2012, the date the confirmation screen results were returned from the lab.

The Board produced a preponderance of evidence that Hancock violated professional confidence when she was under the influence of a controlled substance at work. Because Hancock violated the professional trust placed in her by her employer and the nursing home resident for whom the hydrocodone was prescribed, we find there is cause for discipline under § 335.066.2(12).

Summary

Hancock is subject to discipline under § 335.066.2 (1), (12), and (14).

SO ORDERED on August 21, 2014.

\s\ Mary E. Nelson
MARY E. NELSON
Commissioner

³ *Trieseler v. Helmbacher*, 168 S.W.2d 1030, 1036 (Mo. 1943).

⁴ *Cooper v. Missouri Bd. of Pharmacy*, 774 S.W.2d 501, 504 (Mo. App., E.D. 1989).